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In the
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1964

No. 517

LEWIS W. TWOMBLEY,
Petitioner,

VERSUS

CITY OF LONG BEACH, a California municipal corporation; MURRAY T. COURSON, City Auditor of the City of Long Beach, California; STATE OF CALIFORNIA; and THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA,
Respondents.

PETITION FOR REHEARING AND RECONSIDERATION

LEWIS W. TWOMBLEY, *Petitioner*

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November, 1964.

UTTERS TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-8750

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AUTHORITIES

CASES:

City of Long Beach, et al. v. Marshall (People, Intervenor), 82 P.2d 362 — 2

Hooks v. Canadian Holding Co., et al., 133 Okla. 275, 272 Pac. 366, cert. den. 49 S.Ct. 347, 279 U.S. 850, 73 L.Ed. 993 — 3

Lone Ranger, Inc. v. Cox, et al., 124 F.2d 650 — 2

Tait, Collector of Internal Revenue v. Western Maryland R. R. Co., 53 S.Ct. 706, 289 U.S. 620, 17 L.Ed. 1405 — 2

White, et al. v. Sinclair Prairie Oil Co., 139 F.2d 103 — 2

MISCELLANEOUS:

31 C.J.S., Articles 21-22, 25-29 — 3

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PETITION FOR REHEARING AND RECONSIDERATION

The Petitioner in this cause most respectfully requests the Court to reconsider its Order denying certiorari herein for the following reasons:

STATEMENT

The Petition presents the question as to whether or not the Tidelands and Submerged Lands involved belong under the Submerged Lands Act to the City of Long Beach or to the State of California.

The pertinent facts are that in 1911 the State of California granted to the City of Long Beach the Tidelands

and Submerged Lands of the State of California within the boundaries of said City. Thereafter, various legislative acts were passed, including an Act in 1964 as shown by the Appendix to Petition for Certiorari and the Petition itself.

The Supreme Court of California in *City of Long Beach, et al.* v. *Marshall (People, Intervenor)*, found in 82 P.2d 362, and held that the property involved belonged to the City of Long Beach without restrictions or reservations. Since all parties involved were parties to that litigation, petitioner most respectfully feels that the same constituted *res adjudicata* and that the Legislature was without power thereafter to determine by legislative act that the property belonged to the State of California.

Petitioner's argument in this regard is based on the general Law of Estoppel by judgment or *res adjudicata*, and calls attention of this Court to the case of *Tait, Collector of Internal Revenue* v. *Western Maryland R. R. Co.*, found in 53 S.Ct. 706, 289 U.S. 620, 17 L.Ed. 1405; and *Lone Ranger, Inc.* v. *Cox, et al.*, 124 F.2d 650; *White, et al.* v. *Sinclair Prairie Oil Co.*, 139 F.2d 103. Under any theory, as we view it, the title vested in the City of Long Beach without restrictions or reservations.

The Petitioner further shows to the Court as a reason for reconsideration of his Petition, that even if the Court should find that under the Submerged Lands Act the title vested in the State of California, the State of California is estopped from asserting title as against the City of Long Beach by reason of the After Acquired Title provisions of the Law, which in effect hold that if the grantor did not have title at the time of the grant, as is the case here, then if title is thereafter acquired it passes under the

grant. See: C.J.S., Vol. 31, Articles 21-22, 25-29; and *Hooks v. Canadian Holding Co., et al.*, 133 Okla. 275, 272 Pac. 366, *cert. denied* 49 S.Ct. 347, 279 U.S. 850, 73 L.Ed. 993. In the last cited case there was involved the question of After Acquired Title of purchaser of allotted lands of Choctaw and Chickasaw Nations, and the Court held that the after acquired title inured to the benefit of the purchaser by way of estoppel. There the title was in the Chickasaw and Choctaw Nations at the time of the conveyance. Here the title was in the United States at the time of the Grant in 1911.

It would seem wholly unfair and inequitable to permit the State of California to make the Grant and the City make the improvements and spend the money of the taxpayers, and then when oil is discovered, by legislative act in violation of the Due Process Clause of the Constitution, take from the City that which it owns.

We therefore most respectfully petition and ask this Honorable Court to reconsider its Order denying Certiorari herein and grant Certiorari.

Respectfully submitted,

LEWIS W. TWOMBLEY, *Petitioner*

By _____

JOHN B. OGDEN
1408-1411 Liberty Bank Building
Oklahoma City, Oklahoma
Attorney for Petitioner

CERTIFICATE OF COUNSEL

This is to certify that this Petition for Rehearing and Reconsideration is filed in good faith and not for the purpose of delay.

JOHN B. OGDEN

CERTIFICATE

I certify that I mailed a true and correct copy of this PETITION FOR REHEARING AND RECONSIDERATION to Thomas C. Lynch, Attorney General, Jay L. Shavelson, Assistant Attorney General, N. Gregory Taylor, Deputy Attorney General, 600 State Building, Los Angeles, California, attorneys for respondents State of California and State Lands Commission of the State of California, and to Archibald Cox, Solicitor General and Roger P. Marquis, George S. Swarth, attorneys, Department of Justice, Washington, D. C., on this the _____ day of November, 1964, by depositing the same in the United States Mail with sufficient postage affixed thereon.

JOHN B. OGDEN